IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Ashok Kumar Vs. Sampati Devi

S.B.CR.MISC. PETITION NO.1401/2005

against the order dt.13.10.2004 passed by Additional Sessions Judge, Nagaur in Cr.Revision No.53/2003

DATE OF ORDER :: August 10, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr.Haider Agha, for the petitioner.

Mr.H.R.Soni, for non-petitioner.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. Is directed against the order dt. 13.10.2004 passed by Additional Sessions Judge, Nagaur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 24.7.2003 passed by Additional Chief Judicial Magistrate, Nagaur (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the revisional court as also by the trial court.

Non-petitioner filed an application under section 125 Cr.P.C. before the trial court on 20th July, 1995 seeking monthly allowance of maintenance at the rate of Rs.500/- per month as the limit of Rs.500/- was prevailing according to law applicable on the date of filing of the application, against the petitioner. That application came to be decided by the trial court by order dt. 24.7.2003. During the pendency of the application filed by non-petitioner dt. 20.7.1995 the provision of section 125 Cr.P.C. came to be amended and by State amendment, the outer limit for grant of monthly allowance of maintenance has been made up to Rs.2500/- as stated by the learned counsel for the parties. The trial court allowed that application and granted monthly allowance of maintenance in favour of non-petitioner at the rate of Rs.2500/- per month payable from the date of order. That order came to be challenged by the petitioner before the revisional court and the revisional court dismissed the revision petition. Hence the instant criminal misc. petition under section 482 Cr.P.C.

Non-petitioner, at the time of filing of the application seeking monthly allowance of maintenance, averred in the petition that the petitioner is a Govt. employee, employed on the

post of Teacher and drawing salary of Rs.2700/- as on 20.7.1995. The matter remained pending before the trial court for almost eight years. During the pendency of the petition, there had been various revisions of the salary of the petitioner and as on July, 2003, the gross salary of the petitioner was Rs.7458/- per month. There are certain fixations as stated by the learned counsel for the petitioner. The trial court taking note of the fact that on 20.7.1995, the salary which the petitioner was drawing i.e. Rs.2700/- has underwent various changes and ultimately enhanced and assuming that petitioner is drawing Rs.9000/-, granted monthly allowance of maintenance at the rate of Rs.2500/-. This part of finding of the trial court appears to be based on surmises and conjectures. When the petitioner is in Government employment, his salary is recorded and in absence of recorded salary no such presumption can be drawn that salary of the petitioner might be Rs.9000/- per month. However, this has not been disputed by the petitioner before the revisional court as the petitioner himself filed the salary certificate before the revisional court for the month of July, 2003 showing his gross salary i.e. Rs.7058/-.

Learned counsel for the non-petitioner submits that non-petitioner has a reasonable cause for not living with the petitioner as the petitioner has contacted second marriage. Learned counsel for the petitioner has disputed the second

marriage of the petitioner and submits that the petitioner himself has liability to maintain himself as also his mother.

Keeping in view the admitted income of the petitioner of Rs.7058/- in the month of July, 2003, a monthly allowance in the sum of Rs.2500/- granted by the trial court appears to be on higher side. However, keeping in view the liability of the petitioner as also the requirement to maintain an adult person, a sum of Rs.1800/- per month is just and proper maintenance. Therefore, the order passed by the trial court and affirmed by the revisional court to this extent deserves to be modified.

Consequently, the misc. petition is partly allowed. The order passed by the trial court dt. 24.7.2003 and affirmed by the revisional court is modified to the extent that non-petitioner is entitled for the monthly allowance of maintenance at the rate of Rs.1800/- per month instead of Rs.2500/-. However, it is open for the non-petitioner to seek modification/enhancement of monthly allowance of maintenance if her need to maintain is increased as also the increase in the income of the petitioner under section 127 Cr.P.C. since in the instant case petition was filed in the year 1995.

[H.R.PANWAR],J.

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